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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,019	10/14/2003	Frank Craig	8404.001	4311
30589	7590	04/20/2004	EXAMINER	
DUNLAP, CODDING & ROGERS P.C. PO BOX 16370 OKLAHOMA CITY, OK 73113			FOSTER, JIMMY G	
			ART UNIT	PAPER NUMBER

3728

DATE MAILED: 04/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/685,019	CRAIG ET AL.	
	Examiner	Art Unit	
	Jimmy G Foster	3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-24 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>14 October 2003</u> . | 6) <input type="checkbox"/> Other: ____ |

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1) The determination of obviousness-type double patenting for the claims of this application, with respect to potentially over a hundred and fifty patents and pending patent applications, which have conflicting claims with respect to the product being claimed in the present claims, is held in abeyance until such time as there are claims in this case that are otherwise determined to be patentable. This is to avoid a potentially very lengthy Office action and a premature indication of the need for a terminal disclaimer regarding perhaps over one hundred and fifty patents and pending patent applications

2) The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3) Claims 1-6 are rejected under 35 U.S.C. § 102(b) as being anticipated by Weder (4,733,521). The reference of Weder discloses a potted flower/plant having a cover 12 adhesively attached thereto. See, for example, the description in column 2, lines 6-9 and column 3, lines 28-68.

Although the reference of Weder does not teach Applicant's method in which a cover is placed about the potted flower, including a step of inserting the potted plant/flower into an interior space formed by the cover, Applicant is claiming a product and not a method. The product which is the result of Applicant's method is anticipated by the product disclosed by the reference of Weder since the Weder reference discloses a cover attached by

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adhesive to the of a potted plant. It is well settled that the patentability of a product ordinarily can not depend on its method of being made. See In re Thorpe, 777 F.2d 695, 227 USPQ 964 (1985).

4) Claims 7-12 and 19-24 are rejected under 35 U.S.C. § 102(b) as being anticipated by Crawford (3,962,503). The reference of Crawford discloses a pot of a potted flower arrangement, which has a cover attached thereto by a band or ribbon 6. See, for example, the abstract, col. 3, lines 2-4, and Figures 1 and 7.

Although the reference of Crawford does not teach Applicant's method in which a cover is placed about the potted flower, including a step of inserting the potted flower into an interior space formed by the cover, Applicant is claiming a product and not a method. The product which is the result of Applicant's method is anticipated by the product disclosed by the reference of Crawford since the reference of Crawford discloses a cover attached by ribbon or band to the sides of the pot of a potted plant. It is well settled that the patentability of a product ordinarily can not depend on its method of being made. See In re Thorpe, 777 F.2d 695, 227 USPQ 964 (1985).

5) Claims 13-18 are rejected under 35 U.S.C. § 102(b) as being anticipated by Sievers (1,868,853). In the reference of Sievers, Figure 1 shows a potted plant having a cover 13 attached to the pot 10 thereof by a tie 14,15.

Although the reference of Sievers does not teach Applicant's method in which a cover is placed about the potted flower, including a step of inserting the potted flower into an interior space formed by the cover, Applicant is claiming a product and not a method. The product which is the

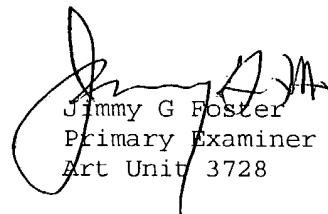
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result of Applicant's method is anticipated by the product disclosed by the reference of Sievers since the reference of Sievers discloses a cover attached by a tie to the sides of the pot of a potted plant. It is well settled that the patentability of a product ordinarily can not depend on its method of being made. See In re Thorpe, 777 F.2d 695, 227 USPQ 964 (1985).

6) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jimmy G Foster whose telephone number is (703) 308-1505. The examiner can normally be reached on Mon-Fri, 8:45 am - 5:15 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (703) 308-2672. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.


Jimmy G Foster
Primary Examiner
Art Unit 3728

JGF
15 April 2004